

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**NEW YORK PARTY SHUTTLE, LLC**

**and**

**Case 02-CA-073340**

**FRED PFLANTZER**

**ORDER<sup>1</sup>**

The Respondent's petition to revoke subpoena duces tecum B-733319 is denied.<sup>2</sup> The subpoena seeks information relevant to the matter under investigation and describes with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. Further,

---

<sup>1</sup> The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

<sup>2</sup> Although the Board's underlying Decision and Order, 359 NLRB No. 112 (2013), enf'd. No. 13-60364 (5th Cir. 2013), was decided by a panel that included two persons whose appointments to the Board were held to be invalid by the United States Supreme Court in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), the Fifth Circuit's Order upholding the Board's Decision and Order became final prior to the Supreme Court's decision in *NLRB v. Noel Canning*, supra. In these circumstances, we regard the matters finally resolved by the court of appeals as res judicata in this proceeding. See *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371, 374-378 (1940); *Nemaizer v. Baker*, 793 F.2d 58, 65 (2d Cir. 1986) (cited with approval in *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010)); see also *The Lorge School*, 355 NLRB 558, 558 fn. 1 (2010).

Moreover, under Sec. 10(e) of the Act, the Board has no jurisdiction to modify an Order that has been enforced by a court of appeals because, upon the filing of the record with the court of appeals, the jurisdiction of that court is exclusive and its judgment and decree are final, subject to review only by the Supreme Court. *Scepter Ingot Castings, Inc.*, 341 NLRB 997, 997 (2004) (citing cases), enf'd. sub nom. *Scepter, Inc. v. NLRB*, 448 F.3d 388 (D.C. Cir. 2006). Sec. 10(e) states, in relevant part: "Upon the filing of the record with [the United States court of appeals] the jurisdiction of the court shall be exclusive and its judgment and decree shall be final," except for potential further review by the Supreme Court. 29 U.S.C. § 160(e).

the Respondent has failed to establish any other legal basis for revoking the subpoena.<sup>3</sup>

See generally *NLRB v. North Bay Plumbing, Inc.*, 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

Dated, Washington, D.C., October 23, 2014

KENT Y. HIROZAWA, MEMBER

HARRY I. JOHNSON, III, MEMBER

NANCY SCHIFFER, MEMBER

---

<sup>3</sup> We deny the petition on the merits and find it unnecessary to pass on whether the petition was timely filed. In addition, the Contempt, Compliance, and Special Litigation Branch has indicated in its opposition brief that it is willing to modify the subpoena by accepting drivers' records with wages and salaries redacted. In considering the petition to revoke, we have evaluated the subpoena as modified in this manner. Member Johnson typically finds cost of compliance to be a relevant issue in an undue burden analysis. However, here, in the context of a compliance proceeding after a Board order has been enforced by a federal court of appeals, the Respondent needed to provide some evidentiary support or at least specific calculations behind its assertion of high cost, beyond a generalized statement and related representations in its unsworn pleadings that compliance would cost \$20,000.00.